

## REMARKS

Claims 1-8 and 15 were previously pending. With this amendment, Claims 1-8 and 15 are cancelled and new Claims 21-53 are added. Therefore, Claims 21-53 are now pending. Now cancelled Claims 1, 3-8, and 15 were rejected under 35 U.S.C. 103(a) as being unpatentable over Suzuki et al. (U.S. Patent No. 6,245,982).

### Suzuki

Suzuki is directed to enabling "displaying an image showing a manner of playing a piece of music while playing the piece of music." (Suzuki, abstract).

In addition, Suzuki discloses (col. 1, lines 39-59) that:

It is therefore a first object of the present invention to provide performance image information creating apparatus and method, and performance image information reproducing apparatus and method, which are capable of displaying image information representing a manner of playing a piece of music while playing the piece of music, and to provide a storage medium storing a program for implementing these methods.

It is a second object of the invention to provide performance image information creating apparatus and method, and performance image information reproducing apparatus and method, which are capable of editing images in accordance with a piece of music, and to provide a storage medium storing a program for implementing these methods.

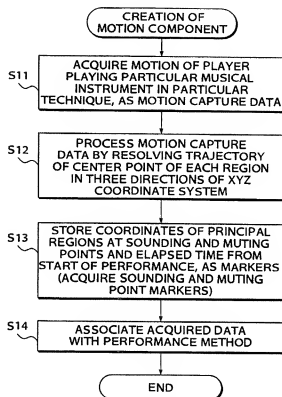
It is a third object of the invention to provide performance image information creating apparatus and method, and performance image information reproducing apparatus and method, which are capable of reproducing images or applying visual effects to images that are displayed, in synchronism with playing or performance of a piece of music.

With respect to Figures 3 and 4 Suzuki (col. 8, line 58-col. 8, line 5) further discloses:

A method of creating the motion components will be now described with reference to the flowchart of FIG. 3. Step S11 is initially executed to acquire, as motion capture data, the motion or action of a player and the motion of a

particular musical instrument when the player plays the instrument in a particular

**FIG.3**



performance technique or method.

FIG. 4A shows the manner of acquiring information on the motion of a player. As shown in FIG. 4A, a player, who is equipped with 3D digitizers on principal parts (indicated by squares) of his/her body, is caused to play a particular pattern (a fraction of performance) using a particular performance technique, and the motion of the body of the player during the performance is recorded. The 3D digitizers may be magnetic or optical ones as known in the art. FIG. 4B shows the case where the motion of a musical instrument is recorded, more specifically, where the swinging motion of a cymbal is recorded. In this case, the swinging motion of the cymbal is recorded through motion capturing, using three 3D digitizers mounted on certain positions of the cymbal as indicated by squares in FIG. 4B.

In step S12, the motion capture data obtained in step S11 is processed by resolving the trajectory of the center point of each region on an XYZ coordinate system, to provide a motion waveform indicating the moving state and position of each region. At the same time, time data may also be recorded. In the above example of the cymbal, the motion waveform of the region consists of the motion waveform of the center position A of the above three points that are regarded as lying on the same plane on which A is located. Skeleton size information indicative of dimensions or sizes of the player and/or the musical instrument on which the motion capture data are obtained is also recorded.

The control flow then goes to step S13 to store markers (that will be called "sounding point markers" and "muting point markers") that determine coordinates of principal regions at which a tone is generated (sounding point) and a tone is eliminated (muting point), and a period of time elapsed from a point of time when its performance is started. Where a phrase as shown in FIG. 4C is to be played, for example, three positions as indicated in the figure represent sounding or tone-generation points, and respective elapsed times  $t$ ,  $t'$ ,  $t''$  from the start of the performance are stored distinguishably. The sounding point markers and muting point markers may be of any type provided that they can specify the timing of tone generation and tone elimination within a set of motion waveform data ( $x$ ,  $y$ ,  $z$ ,  $t$ ) acquired as described above.

The control flow then goes to step S14 in which the data acquired in the manner as described above are associated with the performance method used for giving the performance. At this time, data of closely related regions, for example, the right arm, shoulder, elbow, and the knuckle of each finger, are stored as combined data of set parts. The operator may change the combination of the set parts, or resolve data of the set parts into those of individual parts.

In the above manner, data are contained in the database such that appropriate data can be retrieved in accordance with a change in the position (change in the shape or size of the player and musical instrument) upon reproduction thereof, or a change in the time (or tempo).

Suzuki (col. 11, line 28-col. 13, line 3) further describes an edit screen, which allows the editing of a motion waveform.

Further, Suzuki (col. 13, line 28-col. 14, line 13) discusses, with respect to Fig. 8, a manner of editing a motion waveform.

#### Claim 1

As discussed above, Suzuki is directed to enabling "displaying an image showing a manner of playing a piece of music while playing the piece of music." (Suzuki, abstract). Further, Suzuki discloses capturing motion information and displaying and editing a motion waveform (see, discussion above with respect to Figs. 3 and 4 as well the motion waveform display window 70 illustrated in FIG. 8).

In rejecting now cancelled Claim 1, the Office Action takes Official Notice regarding what would be within the skill of one of ordinary skill in the art, stating "Official Notice is taken that the cues can be edited to indicate a start and end point of a guitar riff."

Regarding the foregoing, the Office Action appears to attempt to take Official Notice of matter that is not "capable of instant and unquestionable demonstration", as expressly required by section 2144.03(A) of the *MPEP*. Indeed, even assuming, arguendo, "the cues can be edited to indicate a start and end point of a guitar riff" is a fact, this fact would be neither of notorious character nor instantly and unquestionably demonstrable. Further, "[a]ssertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art." *MPEP* 2144.03(A). Thus, the Office Action's apparent attempt to officially notice that the cues can be edited to indicate a start and end point of a guitar riff is improper as a matter of law.

Proper use of Official Notice requires compliance with several obligations expressly set forth in the *Manual of Patent Examining Procedure*. The Office has failed to meet these obligations. Specifically, the Office has failed to satisfy its obligations under *MPEP* § 2144.03. *MPEP* § 2144.03 (B), for example, expressly requires the Office to provide specific factual findings predicated on sound technical and scientific reasoning to support taking Official Notice. The *MPEP* goes on to explain that this means that the Office should present an Applicant with the explicit basis on which Official Notice is based so that the Applicant is able to challenge the assertion in the next reply after the Office action. (*MPEP* §2144.03(B)). Naked assertions about what is allegedly known in the art, like those noted, cannot satisfy these requirements.

In sum, the Office Action's apparent assertion of Official Notice is improper and traversed.

#### New Claims

New Claims 21-53 are supported by the specification and do not add new matter. Additionally, Claims 21-53 are each believed to be patentably distinct over the cited art for at least the reasons discussed below. Consideration and prompt allowance of the new claims is respectfully requested.

With respect to Claim 21 (and similarly with respect to independent Claims 44 and 49), Suzuki, which fails to even disclose displaying an audio waveform and an abstract visual presentation, or a cue insertion interface that enables a user to insert

cue at one or more locations with respect to the audio waveform, completely lacks at least the features of:

- an audio waveform corresponding to digital samples of audio over time;
- time information displayed in association with the audio waveform;
- a cue insertion interface that enables a user to insert cue at one or more locations with respect to the audio waveform, wherein the cue is configured to cause a modification with respect to the abstract visual presentation in synchronization with the audio presentation when played back;
- receiving a first signal from a user input device to designate a cue at a first location with respect to the audio waveform; and
- storing the designated cue in computer readable memory.

The dependent claims are each believed to be in condition for allowance over the cited art at least for the same reasons as their base claims, as well as for their unique patentable features.

No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicant is not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

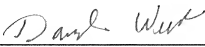
Application No.: 10/603,357  
Filing Date: June 25, 2003

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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